IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST) NO.27278 OF 2002
IN
LAND REFERENCE NO.29 OF 1995

Konkan Railway Corporation Ltd.,)..Appellants
Having its corporate office at)
Belapur Bhavan, CBD Belapur,)
New Bombay.)

V/s.

1. Shri Manohar Shankar Parkar,)..Respondent
Age 39 yrs., Occ.Agri &)(Org.Claimant)
Foot Merchant, R/o.Thiba)
Palace, Ratnagiri.)

And

The Special Land Acquisition)..Respondent
Officer, Ratnagiri.) (Referee)

Ms.Kiran Bhagalia for the appellants.

Mr.B.G.Tangsali, for the Respondent(Org.Claimant).

Coram : S.B.Mhase &
D.B.Bhosale,JJ

Date : March 1, 2005.

Judgment :- (Per : S.B.Mhase,J)

1. Heard both sides.

2. Admit.

3. With the consent of the parties, the appeal is heard finally and is being disposed of as per the following order.

4. The land of the respondent-claimant admeasuring 78.40 Are from Survey No. 26, Hissa No. 1/67/4/1 was acquired by the Special Land Acquisition officer on 31.3.1994 for the Konkan Railway project. The respondent has received an amount of award under protest on 31.8.1994 and has filed a land reference before the Special Land Acquisition officer. The special Land acquisition officer has referred the said matter to the Civil Judge, Senior Division, Ratnagiri. The said Land Reference was numbered as 29 of 1995. It was decided on 23.3.2001 and it was directed that the respondent is entitled to receive compensation of Rs.7,500/- X 78.40 Are. In addition to that he was entitled to 12% component on the aforesaid amount from 22.4.1991 till 31.3.1994. It was further directed that 6% per annum interest shall be paid from 31.3.1994 till the realisation of amount. It was further directed to minus the amount of compensation already paid i.e. Rs.2,80,833/-. This award-decree passed in the Land Reference by the Civil Judge, Senior Division, Ratnagiri is challenged by the Konkan Railway since the acquisition was carried out by the Special Land Acquisition officer for acquiring body of Konkan Railway. However, in a Land Reference the respondent has not shown the

Konkan Railway as a party and therefore, the land reference was decided in the absence of Konkan Railway being party respondent before the Civil Judge, Senior Division, Ratnagiri.

5. Under these circumstances, the appellants submitted this appeal alongwith a leave application, since the appellant was not party to the initial proceedings. This court by order dated 14.2.2003 granted leave to file this appeal. Thereafter the matter is heard finally today by this court.

6. The learned Advocate for the appellants submitted that the appellants were not a party to the initial proceedings and they had no opportunity to contest the claim made by the respondent for enhancement of the compensation. The learned Advocate placed reliance on the Judgment of the Apex court in the case of **M/s.Neyvely Lignite Corpn. Ltd., V/s. Spl. Tahsildar (Land Acquisition), Neyvely** reported in AIR 1995 SUPREME COURT 1004. It has been observed by the Apex court that-

> The beneficiary, i.e. local authority or company a co-op.society registered under the relevant State law, or statutory authority is a person interested to determine just and proper compensation for the acquired land and is an aggrieved person. The beneficiary has the right to be heard by the Collector or the Court. If the compensation is enhanced it is entitled to canvass its correctness by

> filing an appeal or defend the award of the Collector. If it is not made a party, it is entitled to seek leave of the Court and file the appeal against the enhanced award and decree of the Civil Court under Section 26 or of the judgment and decree under Section 54 or is entitled to file writ petition under Art.226 and assail its legality or correctness. When the award made under Section 11 of the Collector is vitiated by fraud, collusion or corruption, the beneficiary is entitled to challenge it in the writ petition apart from the settled law that the conduct of the Collector or Civil Judge is amenable to disciplinary enquiry and appropriate action. These are very valuable and salutary rights. Moreover in the language of Order 1 Rule 10 C.P.C. in the absence of the beneficiary who ultimately is to bear the higher compensation, no complete and effectual determination of binding just and proper compensation to the acquired land would be made. So it is concomitantly a proper party if not a necessary party to the proceedings under Order 1, Rule 10, C.P.C. The denial of the right to a person interested is in negation of fair and just procedure offending Art.14 of the Constitution."

7. The learned Advocate for respondent/- claimant submitted that it was obligatory for the Collector when he made a reference to inform the acquiring body because the reference is filed under Section 18 against the award passed by the Collector and therefore, there is no fault on the part of the respondent in making or not making party to the acquiring body in the present petition. However, in view of the Apex court Judgment, we do not find any substance in the contention raised on behalf of the respondent. What we find is that the Konkan

Railway should have been made a party in a reference and since it is an admitted position that the Konkan Railway is not a party to the proceedings, the order passed by the Civil Judge, Senior Division in Land Reference No.29/95 is not sustainable in law and requires to be set aside.

8. The learned Advocate for the respondent submitted that in all these process respondent has been put to an un-necessary harassment and inconvenience. He submitted that the lands of the respondent have been acquired and inadequate compensation has been paid and when he got an enhanced compensation from the Civil Judge, Senior Division, the present acquiring body has come forward. In fact, as a result of the lapses on the part of the State Government, the appellants are put to advantageous position since they are not made a party and since they are getting matter remanded back. He submitted that respondent is poor agriculturist and even if the matter is remanded back, he should not be put to unnecessary harassment and inconvenience. On the basis of the evidence which has been led by the respondent, the Civil Judge has considered the market price in view of the test laid down under Section 23 and has enhanced the compensation and therefore, the learned Advocate for the respondent submitted that even though for want of a party, the order is required to be set aside and the matter is required to be ramanded. Yet respondent be paid some

amount out of the enhanced amount. He further submitted that in case the order is modified by the reference court after remand of the case the respondent will return back the amount. He further submitted that according to him in any eventuality the amount will not be varied, even the matter is heard after giving opportunity to the appellants, yet he had showed his willingness to give a solvent surety.

9. The learned Advocate for the appellants vehemently opposed for any direction to deposit the amount. She submitted that the enhancement had taken place because the State Government who was participating in the proceedings have not led any evidence and for that purpose the appellants should not be put to any sufference.

10. We have considered both sides. We find that it is a fact that respondent has lost his land for public purpose and the appellants are carrying out the activitiy of transporting the passengers and the goods and the business is being carried out by the appellants. Apart from that, what we find is that in case the respondent proves the market price as he has proved in the present matter in the absence of the appellants, then the respondent will be entitled to the said amount. What we find is that since it is an amount of compensation, some relief should be granted in favour of the respondent, while we are

granting order of the remand in favour of the appellants. The equity can be adjusted and we found that in the following manner equities can be adjusted.

11. In the result, the appeal is partly allowed. The order passed by the Civil Judge, Senior Division, Ratnagiri in a Land Reference No.29 of 1995 on 23.3.2001 is hereby set aside and the matter is remanded back to the Civil Judge, Senior Division, Ratnagiri. The appellants shall suo-moto appear before the Civil Judge, Senior Division, Ratnagiri on 13/6/2005 and shall file a written statement. After filing of the written statement, the Civil Judge, Senior Division, Ratnagiri shall recast the issues within a period of one week. One weeks time shall be granted to both sides to place list of witnesses and thereafter within one week the matter shall be listed for final hearing. At the final hearing, it will be open for the respondent to lead evidence of the additional witnesses. It will be equally open for the appellant to cross-examine the respondent' witnesses and the respondent (the earlier examined witnesses and the later on examined witnesses). Thereafter it will be open for the appellant to lead his own evidence and thereafter the matter will be closed. After closure of the matter, within a period of 15 days, arguments shall be heard by the Civil Judge, Senior Division, Ratnagiri and within a period of one week thereafter, the Judgment shall be delivered. This

schedule shall be strictly followed by all the parties and the Civil Judge, and the parties are directed to co-operate with the Civil Judge, Senior Division, Ratnagiri.

12. We find it appropriate to direct the appellant to deposit amount of 50% enhanced compensation including the solatium, component and interest as directed in the order dated 16.12.2000 by the Civil Judge, Senior Division, Ratnagiri. The said amount shall be deposited within 3 weeks from today in the court of Civil Judge, Senior Division, Ratnagiri. On deposit of such amount, the Civil Judge, Senior Division, Ratnagiri shall release the 50% of the said deposited amount in favour of the respondent/claimant without any surety and if the respondent tenders a solvent surety in respect of rest of the 50% , the same shall be released in favour of respondent. Costs costs in cause.

13. Any observations made in this order shall not be taken into consideration by the Reference Court. The Reference court shall decide the matter on its own merits.

(D.B.Bhosale,J) **(S.B.Mhase,J)**